1092.

SUPREME COURT OF THE UNITED STATES.

No. 137.

THE CITY OF PROVIDENCE, PLAINTIFF IN ERROR,

vs.

DANIEL R. CLAPP.

IN ERROR TO THE CIRCUIT COURT UNITED STATES, FOR THE DISTRICT OF RHODE ISLAND.

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GIDEON, print.

Whereas at a circuit court of the United States, holden at Newport, within and for the Rhode Island district, on the fifteenth day of June, A. D. one thousand eight hundred and fifty-three, present the honorable Benjamin R. Curtis, associate justice Supreme Court U. S.; the honorable John Pitman, U. S. district judge for R. I. district; George H. Browne, esq., U. S. district attorney for R. I. district; Francis C. Gardiner, esq., U. S. marshal; John T. Pitman, clerk of circuit court:

Be it remembered, that at the present term, the following writ and declaration were filed in the clerk's office:

Writ.

DANIEL R. CLAPP
vs.
THE CITY OF PROVIDENCE.

RHODE ISLAND DISTRICT, *ss.*

[L. S.] The President of the United States of America, to the marshal of said district, or to his deputy, greeting:

We command you to summon the city of Providence, in the county of Providence, and State of Rhode Island, a body politic, incorporated as a city by the general assembly of said State of Rhode Island, and composed of citizens of said State of Rhode Island, if they may be found in your district, to answer the complaint of Daniel R. Clapp, of Seekonk, in the county of Bristol, and Commonwealth of Massachusetts, a citizen of said Commonwealth of Massachusetts, at the next circuit court, to be holden at Newport, within and for the Rhode Island district, on the fifteenth day of June next ensuing the date hereof, in an action of trespass on the case, for that the said city neglected to repair, and keep in repair, a certain highway and street in said city, called Broad street, and a certain sidewalk in said street, and to clear off and remove, or cause to be cleared off and removed, the snow and ice on said way and sidewalk, whereby the plaintiff, in consequence of such neglect, and of the snow and ice which said city permitted and suffered to remain on said way and sidewalk, was greatly injured, and his life endangered, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff twenty thousand dollars.

Hereof fail not, and make true return of this writ, with your doings thereon.

Witness the Hon. Roger B. Taney, our chief justice, at Providence, this 25th day of May, anno Domini 1853.

(Signed) JOHN T. PITMAN, *Clerk*.

Endorsed: Joseph M. Blake, pl'ffs' attorney, and surety for costs.

[REC. CXXXVII, D. T., 1853.]—1

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island district, ss.

May 25th, 1853. Made service of the within writ by reading the same in the presence and hearing of Esek Aldrich, city treasurer of the city of Providence, and by delivering in his hand a true and attested copy of this writ, as commanded.

CHARLES E. NEWELL,
Deputy U. S. marshal.

Service - - -	$2 00
Copy - - -	50
Travel, 30 m. -	3 00
	$5 50

Declaration.

RHODE ISLAND DISTRICT, *ss.*

Circuit court of the United States, June term, 1853.

Daniel R. Clapp, of Seekonk, in the county of Bristol, and Commonwealth of Massachusetts, a citizen of said Commonwealth of Massachusetts, complains of the City of Providence, in the county of Providence, and State of Rhode Island, a body politic, incorporated as a city by the general assembly of said State of Rhode Island, and composed of citizens of said State of Rhode Island, summoned by the marshal in an action of trespass on the case: For that the said plaintiff, at said Providence, on the 17th day of January, 1853, while walking along a certain highway in said city, called Broad street, and upon that portion of the same appropriation and set apart for foot passengers, and while using ordinary care in passing along the same, was greatly injured, and one of his legs broken, and his life endangered by being thrown down by ice, and snow, and other obstructions, which had accumulated and been suffered to remain upon the sidewalk of said street, so appropriated to foot passengers, through the negligence of the defendants in not repairing, and keeping in repair, the said highway and the said sidewalk along the same; and in not clearing off and removing, or causing to be cleared off and removed, the snow and ice which had been suffered to accumulate thereon, and which the said defendants had then, before that time, wrongfully and negligently permitted and suffered to remain thereon.

And also for that the said defendants, at said Providence, on the 17th day of January, A. D. 1853, neglected to repair, and keep in repair, a certain public highway and street in said city, called Broad street, and the sidewalks along said street, set apart and appropriated for foot passengers; and neglected to clear off and remove, or to cause to be cleared off and removed, the snow and ice on the said public way and sidewalk; whereby the plaintiff, in consequence of such neglect on

the part of the defendants, and in consequence of the said defendants wrongfully and negligently permitting and suffering said snow and ice, and other obstructions, to accumulate and remain on said street and sidewalks, was, while passing along said street, on said sidewalk, with due care and caution, thrown down and greatly injured, and had one of his legs broken, and his life endangered, and was deprived of his employment for a great length of time, to wit, ever since said day of January, 1853, by reason of his said injuries; and was obliged to expend large sums of money, to wit, the sum of dollars, for surgical treatment, and for the care, skill, and services of a physician while suffering from said injuries, and for board, nursing, and other care during his illness consequent upon said injuries; and has in a great measure lost the use of his leg, and suffered an injury therefrom which will be permanent; and has otherwise been put to great expense, and suffered great injury, from the negligence of the defendants in the premises. (Leave to add another count.)

To the damage of the plaintiff twenty thousand dollars, as laid in his writ, dated the twenty-fifth day of May, A. D. 1853.

Wherefore he sues by his attorneys.

JOSEPH M. BLAKE,
T. A. JENCKES.

And afterwards a further count was added to said declaration, to wit:

3d count. For that at said city of Providence, on the 13th day of January, A. D. 1853, and from that day continually, until the 17th day of the same month and afterwards, a certain highway in said city, to wit, the sidewalk on the southerly side of Broad street, was out of repair and obstructed by large quantities of snow and ice, and unsafe for travellers and foot passengers by reason of such snow and ice; during all which time the defendants unlawfully and injuriously neglected to amend and repair said highway and sidewalk, and to remove, or cause to be removed therefrom, the snow and ice aforesaid; but on the contrary, did unlawfully and injuriously suffer and permit the snow and ice to accumulate and remain on said highway and sidewalk, whereby the same, during all the time aforesaid, was unsafe for travellers and foot passengers; and that on the 17th day of said January, the plaintiff, at said city, while walking upon said highway and sidewalk, with ordinary and proper care and caution, in consequence of said ice and snow, slipped, was thrown down, and his thigh fractured and broken, and whereby the plaintiff was otherwise much hurt and injured in various parts of his body, and his life endangered, and in consequence whereof has suffered great pain, and been deprived of his employment, and been unable to attend to any business from said 17th day of January until this time; and has expended, and been obliged to expend, large sums of money for watchers and nursing, for medicines, and for the skill and services of surgeons and physicians; and in consequence of which said injuries, and the breaking and frac-

turing of his thigh as aforesaid, the plaintiff's leg is, and will ever remain, bent, crooked, and shortened, and weakened, whereby the plaintiff is, and forever will be, unable to attend to and pursue his former business and employment.

Plea.

And at the June term, on motion, the defendant filed the following plea:

And the defendant comes, &c., when, &c., and say, they are not guilty in manner and form as the plaintiff hath above thereof declared against them; and of this, &c.

By their att'y: ABRAHAM PAYNE.

And the case being called for trial, it is suggested upon the record that Judge Pitman does not sit in the case; and it is committed to the following jury: John T. Tilley, foreman; Gideon Gray, Humphrey Woodman, Seth W. Macy, Stillman Welsh, James Burlingame, Jeremiah B. Hazard, Thomas H. Oman, James Lewis, Jesse B. Crandall, George W. Barney, Daniel T. Swinburne, who come into court and return a sealed verdict, which is duly affirmed in the words following, to wit:

"The jury find that the defendants are guilty in manner and form as the plaintiff has in his said declaration complained against them, and assess damages in the sum of three thousand three hundred and seventy-nine dollars and fifty cents.

(Signed) JOHN T. TILLEY, *Foreman*."

Whereupon it is considered by the court here, that the plaintiff have and recover of the defendant the sum of three thousand three hundred and seventy-nine dollars and fifty cents debt, and costs of suit, taxed at dollars cents—amounting in all to the sum of dollars cents.

And after the rendition of the above judgment the defendant entered the following

Petition for writ of error.

RHODE ISLAND DISTRICT, *ss.*

Circuit court of the United States.

In the case

DANIEL R. CLAPP
vs.
THE CITY OF PROVIDENCE.

To the honorable judges of the United States circuit court, for the district of Rhode Island:

The said city of Providence respectfully represents: That at the June term, A. D. 1853, of said court, judgment was rendered against

them, in favor of the plaintiff in said case, upon the verdict of the jury therein ; that the said defendants excepted to the charge of the court to the jury, and their ruling of the law in said case, as fully appears in the bill of exceptions filed in said case. Whereupon they pray that a writ of error may be allowed in said cause, returnable to the next term of the Supreme Court of the United States, to be holden at Washington on the first Monday of December next.

CITY OF PROVIDENCE,
By AMES & PAYNE, & J. M. CLARKE,
Their attorneys.

We hereby acknowledge notice of the above motion.

Atto. for pl'ff.

And with the above petition was presented and approved the following

Bond for costs.

Know all men by these presents, that the City of Providence, a corporation duly incorporated by the general assembly of the State of Rhode Island and Providence Plantations, is held and firmly bound unto Daniel R. Clapp, of Seekonk, in the county of Bristol, in the district of Massachusetts, and a citizen of the State of Massachusetts, in the sum of six thousand dollars, to be paid to the said Daniel R. Clapp, his heirs or assigns, to which payment, well and truly to be made, the said City of Providence binds itself by these presents.

The condition of the above obligation is as follows: Whereas, at the June term of the circuit court of the United States, for the first circuit, begun and holden at Newport, within and for the Rhode Island district, on the fifteenth day of June, A. D. 1853, a certain action at law was determined, and wherein the said Daniel R. Clapp was plaintiff, and said City of Providence was defendant; and the said City of Providence has prayed for a writ of error to carry up to the Supreme Court of the United States, next to be holden at Washington on the first Monday of December next:

Now, therefore, if the said City of Providence shall prosecute its said writ of error with effect before said Supreme Court of the United States, and shall well and truly pay all such costs and damages as shall be adjudged for said city to pay, by said Supreme Court or by said circuit court, by reason of said writ of error, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

In witness whereof the said City of Providence, under and by virtue of a resolution duly passed by the city council of said city, [L. S.] has caused its seal to be hereunto affixed by the city treasurer, this sixteenth day of July, A. D. one thousand eight hundred and fifty-three.

ESEK ALDRICH, *City Tr.*

Signed, sealed and delivered in presence of—
ALBERT PABODIE.

Approved: J. T. PITMAN, *Clerk*.

RHODE ISLAND DISTRICT, *sc*.

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Nov. 29th, 1853.

I, John T. Pitman, clerk of said circuit court for said district, do hereby certify, that the above and foregoing eight pages contain a true transcript of the record of the proceedings aforesaid, with all things thereunto relating in said case—Daniel R. Clapp vs. The City of Providence—duly examined and compared.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, the day and year above writ-
[L. S.] ten.

JOHN T. PITMAN, *Clerk*.

Circuit court U. States.—June term, A. D. 1853.

RHODE ISLAND DISTRICT, *sc*.

DANIEL R. CLAPP
vs.
THE CITY OF PROVIDENCE.

Be it remembered that the above entitled cause, being at the term aforesaid put to the jury upon the general issue therein pleaded, it was in substance therein proved by the plaintiff in support of his declaration, that snow had fallen on the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-three, in the morning, and the thirteenth day of said January through the whole day, and on the fourteenth day of said January, about the middle of the day; being in all a fall of snow about ten inches in depth. That the snow had somewhat drifted on this sidewalk, and been trodden down, and that the same was not removed from the sidewalk in front of the house at the corner of Eddy and Broad streets, in the city of Providence, on Broad street, either by the owner or occupant of said house, or by the authorities of the city of Providence, and that said Broad street was one of the principal thoroughfares and streets in said city of Providence. That on the fifteenth day of said January the thermometer rose, at noon, to 36° Fahrenheit, in the shade, in an exposed place, when the snow melted and run off in great part, leaving, however, in the centre of the sidewalk of said street, which was flagged two and a half feet in width, and which was admitted to be a lawful sidewalk, a ridge of trodden snow, from five to six inches high in the centre, and shelving off on both sides to a depth of from one and a half to two inches deep. And on the sixteenth day of said January the weather became very cold and the snow on said sidewalk was frozen hard, leaving, on said

sixteenth day of said January, and on the seventeenth day thereof, the said trodden down ridge frozen hard, to the height of five or six inches; and the remainder of said sidewalk, which was, in the whole, about twelve feet wide, covered with rough ice, except where, in some places, the cobble stones, which formed the remainder of said sidewalk, came through the ice; and that whilst the sidewalk was in this condition, the plaintiff, on the night of the seventeenth day of said January, somewhere between the hours of ten and eleven o'clock, p. m., the night being pretty light, in walking on said sidewalk and talking with another man, in company with him, stepped on said ridge of trodden snow, or on the side thereof, when his feet slipped from under him, and he fell at full length across said ridge, and broke his leg about the centre of the thigh-bone, in an oblique direction; and it was also proved, that one other person had fallen on the same sidewalk, in front of the same block, but below or east of the place where the plaintiff fell.

Whereupon the defendants contended before the court, that by the provisions of the public statutes of Rhode Island concerning the mending of highways and bridges, requiring the highways to be kept in repair and amended, from time to time, so that the same may be safe and convenient for travelers with their teams, carts and carriages, at all seasons of the year; the condition of said highways required by the law aforesaid, as to such safety and convenience in cases of falls of snow, was merely that the snow therein should be so trodden down or removed, as that said highways should not be so blocked up or encumbered with snow, as not to be safely and conveniently open and passable, so far as such blocking up or encumbering thereof with snow was concerned, but that said highways were not required by law to be so free from snow or ice that the foot traveler should not be in danger of slipping thereon; and that the snow on said sidewalk being so trodden and hardened into ice, as that the said sidewalk was not blocked up or encumbered by snow, so that the plaintiff could not safely and conveniently pass thereon, so far as such blocking up or encumbering was concerned; but the said sidewalk being passable and open, in the sense of the public statutes of Rhode Island, the defendants were not liable to the plaintiff because said sidewalk was slippery and he fell thereon and broke his thigh-bone as aforesaid.

And there being a statute of the State of Rhode Island authorizing the city of Providence to build and repair sidewalks, for the use of the public in passing along the streets of said city, at the expense of the owners of estates adjoining said sidewalks; which statute was passed at the session of the general assembly, A. D. 1821, in the language following, viz:

An act concerning sidewalks in the town of Providence.

(Passed 1821.)

Section 1. Sidewalks to be repaired by owners of adjoining lands.

2. Commissioners to be appointed—power.—This power is now exercised by the street commissioners.

3. Owners to be notified to make repairs.—Proceedings in case of neglect.

4. Repairs to be done under inspection of surveyor of highways.

Section 1. *Be it enacted by the general assembly, and by the authority thereof it is enacted,* That from and after the passing of this act, the sidewalks in the streets and highways in the town of Providence shall be built, altered and repaired at the expense of the owners of the adjoining lands, in the way and manner hereinafter provided.

Sec. 2. *And be it further enacted,* That the freemen of said town, at their annual election of town officers, shall appoint three of their number, who shall be called commissioners of sidewalks, and who shall have power and authority, and whose duty it shall be to superintend, order and direct the manner of building, altering and amending the sidewalks, and to order and determine of what height and width the same shall be, and of what materials the walks shall be composed, and how and with what secured and finished; with power to alter and improve those already made, in such way and manner as they think the public convenience requires; to build or alter any wall on any lot adjoining the street, and to remove any steps, posts, cellar-doors or other obstructions in the sidewalks.

Sec. 3. *And be it further enacted,* that when the said commissioners shall have determined in what manner, and of what materials, and within what time, any new sidewalk shall be made, or in what manner and within what time any old sidewalk shall be altered and improved, they shall cause written or printed notice thereof to be personally given to the owner of the adjoining lot, if residing within the town of Providence, particularly describing the materials, width, height and manner the sidewalk shall be built, or the alteration to be made; but if the owner shall not reside in said town, then the notice shall be given to the tenant in possession; but if no tenant shall be in possession, then the same shall be published in one of the newspapers for the town of Providence, for three successive weeks; at the expiration of the time so limited by the commissioners, if the work shall not have been performed or proceeded in according to the directions of the said commissioners, they shall, in their discretion, order the surveyor of the highways for the time being to proceed at the expense of the town, and execute the directions so by them given to the owner; a copy of which order shall be by them given to said surveyor; and when the same shall be by him accomplished, it shall be the duty of the commissioners to certify the expenses thereof to the assessors of taxes for said town, together with ten per cent. in addition thereto, to cover the interest, cost of assessing and collection; and the said sum so certified shall be by the assessors added to the tax of the owner of such adjoining lot, so neglecting as aforesaid; which proceedings shall be conclusive; and the said owner with his estate shall be responsible therefor, in the same manner as for other taxes.

Sec. 4. *And be it further enacted,* that any sidewalk which may be hereafter built, altered or repaired by the owner of the adjoining lot,

shall be done under the inspection of the surveyor of the highways for the time being, and in pursuance of the directions given by the commissioners aforesaid for that purpose: and that until the next annual election of town officers, Edward Carrington, Charles Dyer and Dexter Thurber be and they are hereby appointed commissioners of sidewalks, and authorized and required to carry this act into full effect.

Also a statute passed at the January session, 1841, of said general assembly, in the words following, viz:

An act in amendment of an act entitled "An Act concerning sidewalks in the town of Providence."

(Passed January 18, 1841.)

Section 1. Second section of former act repealed in part.
Section 2. Powers of sidewalk commissioners vested in city council, or officers appointed by them.

Be it enacted by the general assembly, as follows:

Section 1. So much of the second section of the act to which this is in amendment as requires the annual appointment of three commissioners of sidewalks is hereby repealed.

Sec. 2. All the powers given by said act to the sidewalk commissioners shall, after the first Monday of June next, be vested in the city council of the city of Providence, or in case of the death or resignation of the present sidewalk commissioners, then the said powers shall be forthwith vested in said city council; and the said city council is hereby authorized, either by a committee of their own body or by any person or persons appointed by them, to proceed in the same manner and with the same powers as are granted to the sidewalk commissioners, in and by the said act to which this is in amendment.

And the city of Providence having passed an ordinance requiring the owners or occupants of estates adjoining said sidewalk to remove the snow therefrom, under a penalty within a time limited therein, in the words following, to wit:

Sec. 2. And be it further ordained, that it shall be the duty of the occupants of the lower stories of all buildings, and the occupants of all lands, and the owners of all unoccupied lands and buildings which shall adjoin any of the sidewalks aforesaid, to remove all the snow from said walks which shall fall thereon, so far as the same shall adjoin said buildings and lands, as soon as may be after the same shall have fallen; and every person neglecting so to do for the space of twenty-four hours after the same has fallen, shall forfeit and pay the sum of two dollars for each offence, to the use of said city, to be recovered by proper legal process before any court of competent jurisdiction.

And several other ordinances having been from time to time passed relating to the same subject in the words following, to wit:

An ordinance establishing street commissioners, prescribing the duties thereof, and for other purposes.

Section 1. Three commissioners—duties of—first meeting.
2. To make surveys of streets—to notify parties—fix grades—copy to be left at city clerk's office—appeals—monuments to be fixed—plat to be recorded.
3. May direct building, &c., of side-walks—notice to owners of property—in case of neglect, work to be done by surveyor of highways—expense how collected.
4. May order fences built, or posts, &c., removed—penalty for neglect—mode of collection.
5. When owners of property on street furnish curbstones, surveyor to pave gutters, &c.
6. Commissioners to examine lines of streets and to report encroachments.
7. Compensation—by whom paid.

Be it ordained by the city council of the city of Providence, as follows, viz:

Section 1. There shall be annually appointed by the city council three street commissioners. It shall be the duty of the street commissioners to fix the height, width and materials of sidewalks, and the grades of streets, and to prevent encroachments thereon; and to perform such other duties as are hereinafter set forth. They shall meet within ten days of their election, and shall appoint one of their number clerk, who shall keep a record of their proceedings.

Sec. 2. It shall be the duty of the street commissioners to make, or cause to be made, surveys of all such streets, highways, and proposed highways, with the adjacent lands, in which they may find it expedient to establish the grade or boundaries. Whenever any street or highway shall be so surveyed, they shall make out a statement of the bounds of such street or highway, and also the grade which in their opinion ought to be established thereon. They shall then appoint a day and place to hear the parties interested in the same, and shall cause written or printed notices thereof to be given to the owners of property on such street or highway who reside in said city, or shall cause such notices to be left at the place of their abode, and shall advertise in one of the newspapers of the city twice a week for three weeks successively, giving notice to all persons interested to appear and show cause why such grade should not be established. The said commissioners, after hearing the objections of such interested persons as shall appear and object, may establish such grade as they may deem expedient, and determine the width of the sidewalks to be built thereon. They shall leave a statement of the grade thus established in the office of the city clerk, and give notice in one of the newspapers printed in Providence that such statement is so left; and if any owner of land shall feel himself aggrieved by any grade so established, he may appeal to the board of aldermen, by filing his appeal in writing with the clerk of the board of

aldermen, within ten days after the publication of such notice of the decision of the street commissioners; and the board of aldermen, after hearing the matter and inspecting the ground, may confirm or alter such grade in their discretion; and when such grade shall be finally determined, the street commissioners shall cause to be placed suitable stone monuments, or refer to such permanent fixtures on said street or highway, from which such grade may be indicated; and shall cause to be recorded in a book to be kept in the office of the city clerk a plat of such street or highway surveyed as aforesaid, which shall exhibit the bounds thereof, the width of the sidewalks, and such other matter as the commissioners may deem expedient.

Sec. 3. The street commissioners are hereby vested with full power and authority to superintend, order, and direct the building and altering of any sidewalk in the city, the materials to be used, and the time within which said building or alteration shall be made; and whenever said commissioners shall have determined in what manner, of what materials, and within what time any sidewalk shall be built or altered, they shall cause written or printed notice thereof to be personally given to the owner of the adjacent lot, if residing within the city of Providence, particularly describing the materials, width, height, and manner the sidewalk shall be built, or the alteration to be made; but if the owner shall not reside in said city, then the notice shall be given to the tenants in possession; but if no tenant shall be in possession, then the same shall be published in one of the newspapers of this city for three successive weeks. At the expiration of the time so limited by the commissioners, if the work shall not have been prosecuted according to the directions of the said commissioners, they shall, in their discretion, order the surveyor of highways for the time being to proceed, at the expense of the city, and execute the directions so by them given to the owner, a copy of which order shall be by them given to the said surveyor; and when the same shall be by him accomplished, it shall be the duty of the commissioners to certify the expense thereof to the assessors of taxes for said city, together with ten per cent. in addition thereto, to cover the interest, cost of assessing and collecting; and the said sum so certified shall be by the assessors added to the tax of the owner of such adjacent lot so neglecting as aforesaid, which proceeding shall be conclusive, and the said owner, with his estate, shall be responsible therefor in the same manner as for other taxes; and in case that any society that is exempt from taxation shall be the owner of said land, the proceedings shall be the same, and the notice shall be given to the treasurer of said society, and the cost of such alteration with the ten per cent. additional shall be collected of such society in the same manner as is prescribed by law for the collection of taxes.

Sec. 4. The street commissioners are hereby authorized and empowered to pass such orders as they may deem expedient, directing the owner or owners of land adjacent to any public street or highway to build or alter any wall or fence separating such land from said street or highway, or to remove from the sidewalk to such land any steps,

posts, cellar doors, or other obstructions thereon, within such time as the said commissioners shall in such order direct; and to impose such pecuniary penalty for the breach of such order, not exceeding two hundred dollars, as they shall deem expedient; which penalty may be sued for and recovered for the use of the city, in an action of debt, in the name of the city treasurer, before any court of competent jurisdiction to try the same.

Sec. 5. Whenever the owners of the land on both sides of any street, or of any section of a street belonging to the city, which section shall not be less than two hundred feet long, the grade and width of sidewalk of which has been established and recorded as is directed in this ordinance, shall furnish the curbstone, and build the sidewalks thereof, the surveyor of highways is hereby authorized to pave the gutters, and to fill up and gravel such street or section of a street at the expense of the city, provided said expense shall not exceed the sum of three hundred dollars.

Sec. 6. Whenever any surveyor of highways, or any person or persons, or corporation, about to erect any fence or building on any line of any street or highway, shall request the street commissioners to examine into, ascertain, and show to such surveyor or person so requesting the line of such street or highway, it shall be the duty of the commissioners to ascertain and point out such line; and in case any person or corporation shall erect any fence or building so as to encroach on any street or highway, it shall be the duty of the commissioners to make report of such encroachments in writing to the mayor, who shall proceed in the premises as the interest of the city in his opinion may require.

Sec. 7. The pay of the street commissioners shall be two dollars per day each, and half days in proportion, which shall be paid by the city when the services rendered are by request of the surveyor of highways, or in any proceedings relating to the grades of streets or highways; but in other cases such compensation shall be paid by the person or persons requesting the same to be rendered.

Also the following ordinance:

Sec. 3. It shall be the duty of said police constables, as directed by the city marshal under such rules as the board of aldermen may establish, to pass through the city and take diligent notice of violations of law, and as far as practicable to give such information and advice as may prevent such violations; to report all nuisances; to examine all cases of pauperism, and remove all paupers and sick persons which the overseer of the poor shall direct; to visit the railroad stations at every arrival or departure of a passenger train by day or night; to attend ward meetings and meetings of either branch of the city council; to serve all notices delivered to them by any city officer in the discharge of his duty; to attend all places of amusement to which they may be directed by the mayor, aldermen, or city marshal; to examine into all cases of truancy which are reported to the mayor by the superintendent

of the public schools; to perform any executive duties which the mayor shall direct in any part of the city, or which any alderman shall direct in his own ward; and promptly to execute any process or summons which is placed in their hands, and which they are by law authorized to execute. The city marshal and police constables shall attend at fires which may happen in the city, and perform any duty for the preservation of good order or of property which the mayor, or, in his absence, any fire-ward, may direct.

Also the following ordinance:

An ordinance in amendment of an ordinance entitled "An ordinance for the preservation of sidewalks."

(Passed February 10, 1851.)

Section 1. Extends the provisions of a former ordinance to all sidewalks.

Section 2. Designates complainants.

It is ordained by the city council of the city of Providence, as follows, viz:

Section 1. So much of the first, second, and third sections of the ordinance to which this is in amendment, as limits the provisions thereof to sidewalks laid with brick or stone, is hereby repealed; and said ordinance, with all its provisions and penalties, shall be in force throughout the city in relation to all sidewalks.

Sec. 2. No person shall be authorized to make complaints or commence prosecutions for breaches of the provisions of said ordinance, except the city marshal, city sergeant, and police constables.

The defendants contended, that neither said statute nor the said ordinances defined or enlarged the duty or liability of said city as to the removal of snow from said sidewalks under the public statutes of the State aforesaid, nor were any evidence of the degree of care required by said public statutes of said city of Providence, in dealing with snow which had fallen upon the sidewalk, but that notwithstanding the same, said city would not be liable under said public law, if the snow on said sidewalk was trodden down so as to be open and passable.

But the court refused to charge the jury as contended for by the counsel for the defendants, and did charge the jury, that by the statute law of Rhode Island the city was obliged to keep this street conveniently and safely passable at all seasons of the year. That by a special act, the legislature having authorized the city to have sidewalks designed for foot passengers, the city was bound to keep those sidewalks convenient and safe for pedestrians. That the law did not require absolute convenience or safety, but a reasonable degree of convenience and safety, having reference to the nature and uses of the way and the frequency of its uses. That these principles are applicable to this sidewalk and to its alleged want of safety. That when a fall of snow takes place so as to render a sidewalk not conveniently and safely

An ordinance establishing street commissioners, prescribing the duties thereof, and for other purposes.

Section 1. Three commissioners—duties of—first meeting.
2. To make surveys of streets—to notify parties—fix grades—copy to be left at city clerk's office—appeals—monuments to be fixed—plat to be recorded.
3. May direct building, &c., of side-walks—notice to owners of property—in case of neglect, work to be done by surveyor of highways—expense how collected.
4. May order fences built, or posts, &c., removed—penalty for neglect—mode of collection.
5. When owners of property on street furnish curbstones, surveyor to pave gutters, &c.
6. Commissioners to examine lines of streets and to report encroachments.
7. Compensation—by whom paid.

Be it ordained by the city council of the city of Providence, as follows, viz:

Section 1. There shall be annually appointed by the city council three street commissioners. It shall be the duty of the street commissioners to fix the height, width and materials of sidewalks, and the grades of streets, and to prevent encroachments thereon; and to perform such other duties as are hereinafter set forth. They shall meet within ten days of their election, and shall appoint one of their number clerk, who shall keep a record of their proceedings.

Sec. 2. It shall be the duty of the street commissioners to make, or cause to be made, surveys of all such streets, highways, and proposed highways, with the adjacent lands, in which they may find it expedient to establish the grade or boundaries. Whenever any street or highway shall be so surveyed, they shall make out a statement of the bounds of such street or highway, and also the grade which in their opinion ought to be established thereon. They shall then appoint a day and place to hear the parties interested in the same, and shall cause written or printed notices thereof to be given to the owners of property on such street or highway who reside in said city, or shall cause such notices to be left at the place of their abode, and shall advertise in one of the newspapers of the city twice a week for three weeks successively, giving notice to all persons interested to appear and show cause why such grade should not be established. The said commissioners, after hearing the objections of such interested persons as shall appear and object, may establish such grade as they may deem expedient, and determine the width of the sidewalks to be built thereon. They shall leave a statement of the grade thus established in the office of the city clerk, and give notice in one of the newspapers printed in Providence that such statement is so left; and if any owner of land shall feel himself aggrieved by any grade so established, he may appeal to the board of aldermen, by filing his appeal in writing with the clerk of the board of

aldermen, within ten days after the publication of such notice of the decision of the street commissioners; and the board of aldermen, after hearing the matter and inspecting the ground, may confirm or alter such grade in their discretion; and when such grade shall be finally determined, the street commissioners shall cause to be placed suitable stone monuments, or refer to such permanent fixtures on said street or highway, from which such grade may be indicated; and shall cause to be recorded in a book to be kept in the office of the city clerk a plat of such street or highway surveyed as aforesaid, which shall exhibit the bounds thereof, the width of the sidewalks, and such other matter as the commissioners may deem expedient.

Sec. 3. The street commissioners are hereby vested with full power and authority to superintend, order, and direct the building and altering of any sidewalk in the city, the materials to be used, and the time within which said building or alteration shall be made; and whenever said commissioners shall have determined in what manner, of what materials, and within what time any sidewalk shall be built or altered, they shall cause written or printed notice thereof to be personally given to the owner of the adjacent lot, if residing within the city of Providence, particularly describing the materials, width, height, and manner the sidewalk shall be built, or the alteration to be made; but if the owner shall not reside in said city, then the notice shall be given to the tenants in possession; but if no tenant shall be in possession, then the same shall be published in one of the newspapers of this city for three successive weeks. At the expiration of the time so limited by the commissioners, if the work shall not have been prosecuted according to the directions of the said commissioners, they shall, in their discretion, order the surveyor of highways for the time being to proceed, at the expense of the city, and execute the directions so by them given to the owner, a copy of which order shall be by them given to the said surveyor; and when the same shall be by him accomplished, it shall be the duty of the commissioners to certify the expense thereof to the assessors of taxes for said city, together with ten per cent. in addition thereto, to cover the interest, cost of assessing and collecting; and the said sum so certified shall be by the assessors added to the tax of the owner of such adjacent lot so neglecting as aforesaid, which proceeding shall be conclusive, and the said owner, with his estate, shall be responsible therefor in the same manner as for other taxes; and in case that any society that is exempt from taxation shall be the owner of said land, the proceedings shall be the same, and the notice shall be given to the treasurer of said society, and the cost of such alteration with the ten per cent. additional shall be collected of such society in the same manner as is prescribed by law for the collection of taxes.

Sec. 4. The street commissioners are hereby authorized and empowered to pass such orders as they may deem expedient, directing the owner or owners of land adjacent to any public street or highway to build or alter any wall or fence separating such land from said street or highway, or to remove from the sidewalk to such land any steps,

posts, cellar doors, or other obstructions thereon, within such time as the said commissioners shall in such order direct; and to impose such pecuniary penalty for the breach of such order, not exceeding two hundred dollars, as they shall deem expedient; which penalty may be sued for and recovered for the use of the city, in an action of debt, in the name of the city treasurer, before any court of competent jurisdiction to try the same.

Sec. 5. Whenever the owners of the land on both sides of any street, or of any section of a street belonging to the city, which section shall not be less than two hundred feet long, the grade and width of sidewalk of which has been established and recorded as is directed in this ordinance, shall furnish the curbstone, and build the sidewalks thereof, the surveyor of highways is hereby authorized to pave the gutters, and to fill up and gravel such street or section of a street at the expense of the city, provided said expense shall not exceed the sum of three hundred dollars.

Sec. 6. Whenever any surveyor of highways, or any person or persons, or corporation, about to erect any fence or building on any line of any street or highway, shall request the street commissioners to examine into, ascertain, and show to such surveyor or person so requesting the line of such street or highway, it shall be the duty of the commissioners to ascertain and point out such line; and in case any person or corporation shall erect any fence or building so as to encroach on any street or highway, it shall be the duty of the commissioners to make report of such encroachments in writing to the mayor, who shall proceed in the premises as the interest of the city in his opinion may require.

Sec. 7. The pay of the street commissioners shall be two dollars per day each, and half days in proportion, which shall be paid by the city when the services rendered are by request of the surveyor of highways, or in any proceedings relating to the grades of streets or highways; but in other cases such compensation shall be paid by the person or persons requesting the same to be rendered.

Also the following ordinance:

Sec. 3. It shall be the duty of said police constables, as directed by the city marshal under such rules as the board of aldermen may establish, to pass through the city and take diligent notice of violations of law, and as far as practicable to give such information and advice as may prevent such violations; to report all nuisances; to examine all cases of pauperism, and remove all paupers and sick persons which the overseer of the poor shall direct; to visit the railroad stations at every arrival or departure of a passenger train by day or night; to attend ward meetings and meetings of either branch of the city council; to serve all notices delivered to them by any city officer in the discharge of his duty; to attend all places of amusement to which they may be directed by the mayor, aldermen, or city marshal; to examine into all cases of truancy which are reported to the mayor by the superintendent

of the public schools; to perform any executive duties which the mayor shall direct in any part of the city, or which any alderman shall direct in his own ward; and promptly to execute any process or summons which is placed in their hands, and which they are by law authorized to execute. The city marshal and police constables shall attend at fires which may happen in the city, and perform any duty for the preservation of good order or of property which the mayor, or, in his absence, any fire-ward, may direct.

Also the following ordinance:

An ordinance in amendment of an ordinance entitled "An ordinance for the preservation of sidewalks."

(Passed February 10, 1851.)

Section 1. Extends the provisions of a former ordinance to all sidewalks.

Section 2. Designates complainants.

It is ordained by the city council of the city of Providence, as follows, viz:

Section 1. So much of the first, second, and third sections of the ordinance to which this is in amendment, as limits the provisions thereof to sidewalks laid with brick or stone, is hereby repealed; and said ordinance, with all its provisions and penalties, shall be in force throughout the city in relation to all sidewalks.

Sec. 2. No person shall be authorized to make complaints or commence prosecutions for breaches of the provisions of said ordinance, except the city marshal, city sergeant, and police constables.

The defendants contended, that neither said statute nor the said ordinances defined or enlarged the duty or liability of said city as to the removal of snow from said sidewalks under the public statutes of the State aforesaid, nor were any evidence of the degree of care required by said public statutes of said city of Providence, in dealing with snow which had fallen upon the sidewalk, but that notwithstanding the same, said city would not be liable under said public law, if the snow on said sidewalk was trodden down so as to be open and passable.

But the court refused to charge the jury as contended for by the counsel for the defendants, and did charge the jury, that by the statute law of Rhode Island the city was obliged to keep this street conveniently and safely passable at all seasons of the year. That by a special act, the legislature having authorized the city to have sidewalks designed for foot passengers, the city was bound to keep those sidewalks convenient and safe for pedestrians. That the law did not require absolute convenience or safety, but a reasonable degree of convenience and safety, having reference to the nature and uses of the way and the frequency of its uses. That these principles are applicable to this sidewalk and to its alleged want of safety. That when a fall of snow takes place so as to render a sidewalk not conveniently and safely

passable, it is the duty of the city to use ordinary care and diligence to restore the sidewalk to a reasonably safe and convenient state. That the law does not prescribe how this shall be done, whether by treading down or removing the snow; and it is for the jury to find as matter of fact, whether this sidewalk, at the time in question, was in a reasonably safe and convenient state, having reference to its uses; and if it was not so, whether its want of safety and convenience was owing to the want of ordinary care and diligence on the part of the city; and in considering whether due diligence required the city to remove the snow, the jury ought to take into consideration the aforesaid ordinances, not as prescribing a rule binding on the city, but as evidence of the fact that a removal, and not a treading down, of the snow was reasonably necessary.

To which refusals of the court so to instruct the jury as prayed for, as well as to the instructions so as aforesaid given to the jury, the defendants, by their counsel, excepted, and prayed the exceptions to be allowed by the judge who presided at the trial; and after the said instructions were so refused, and so given as aforesaid, the jury withdrew, and afterwards returned their verdict for the plaintiff for the sum of three thousand three hundred and seventy-nine dollars and fifty cents.

And thereupon the presiding judge of said court, at the request of the party objecting, did put his said seal to this bill of exceptions, the same being found to be true, pursuant to the law in such cases provided.

[SEAL.] B. R. CURTIS,
Associate justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, holden in and for the Rhode Island district, greeting: [L. S.]

Because, that in the record and process, and also in the rendering of judgment in a suit before you or some of you, between Daniel R. Clapp of Seekonk, in the county of Bristol, and Commonwealth of Massachusetts, a citizen of said Commonwealth of Massachusetts, plaintiff, and the City of Providence in the county of Providence and State of Rhode Island, a body politic incorporated as a city by the general assembly of said State of Rhode Island, and composed of citizens of said State of Rhode Island, defendant, in an action of trespass on the case; a manifest error has intervened, to the great damage of the said city of Providence, as has in its complaint been stated:

And it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf.

You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate

justices of the Supreme Court of the United States, on the first Monday of December next at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, our chief justice of the said Supreme Court, this seventeenth of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-eighth.

JOHN T. PITMAN, *Clerk*.

Allowed:

B. R. CURTIS,
Asso. Jus. S. C. U. S.

RHODE ISLAND DISTRICT, *ss:*

The United States of America, to Daniel R. Clapp, of Seekonk, in the county of Bristol and Commonwealth of Massachusetts, a citizen of said Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to appear forthwith before the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the first circuit, in and for the Rhode Island district, wherein the city of Providence in the county of Providence and State of Rhode Island, a body politic incorporated as a city by the general assembly of said State of Rhode Island, and composed of citizens of said State of Rhode Island, is plaintiff in error, and you, the said Daniel R. Clapp, are defendant in error, to show cause, if any there be, why the judgment rendered against the said city of Providence, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the seal of said circuit court, and my hand, this nineteenth day of October, A. D. one thousand eight*een* hundred and fifty-three.

B. R. CURTIS,
Asso. Jus. S. C. U. S.

UNITED STATES OF AMERICA,
Rhode Island district, sc:

NOVEMBER 28TH, 1853.

Made service of the within citation by leaving a true and attested copy hereof at the last and usual place of abode of the within named Daniel R. Clapp.

CHARLES E. NEWELL,
Dep'y U. S. Marshal.

Service - - -	$2 00
Copy - - -	50
416 miles travel at 6 -	24 96
	$27 46